

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8438 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAJKAMAL GYMKHANA PVT.LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8438 of 2005
MR NK MAJMUDAR for Petitioner No. 1
MR AR MAJMUDAR for Petitioner No. 1
Mr.Dipen Desai, learned A.G.P. for Respondent No. 1
..... for Respondent No. 2-3
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/05/2005

ORAL JUDGEMENT

#. Rule. Mr.Dipen Desai, learned A.G.P. waives service of rule on behalf of the respondents.

#. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction quashing and setting aside the action of the respondent authorities of interfering with the legal activities of the petitioner company, i.e. Gymnastic, Sports and playing game of Rummy and Marriage within the premises of the petitioner company and for holding that the game of Rummy and Marriage are not games of chance but games of skill. Further prayer is made for quashing and setting aside the action of the respondent authorities of carrying out raid at the premises of the petitioner company without there being any reason. It is also prayed for appropriate writ, order or direction directing the respondent authorities not to interfere with the legal activities of the petitioner company and its members and not to harass and torture its members and not to disturb its members from playing Rummy and Marriage in the Card Room of the petitioner company. Further prayer is also made for declaration that the provisions of the Bombay Prevention of Gambling Act ("the Act" for short) do not apply to the legal activities of the petitioner company and its members of playing games of Rummy and Marriage. It is further prayed to direct the respondent authorities to lay down guidelines of carrying out the raid at the premises of the petitioner company and to carry out the raid only in the presence of two gazetted officers and to prepare the panchnama in the presence of two neutral and reputed citizens of Baroda City and the last prayer is made directing the respondent authorities to make necessary endorsement in the visit book / register maintained by the petitioner company and to make necessary entry in respect of the panchnama.

#. Heard the learned advocates for the parties.

#. Learned advocate appearing for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of The State of Andhra Pradesh Vs. Satyanarayan and others, reported in AIR 1968 SC 825 and has submitted that the game of Rummy is mainly a game of skill and it is not entirely a game of chance and therefore game of Rummy is outside the purview of the word "Gambling" and therefore the said game cannot be said to be an offence under the Act. The petitioner has also relied upon the judgment and orders passed by the learned Single Judge of this Court in Special Civil Application No.5474 of 1997 and Special Civil Application

No.8053 of 1997, by which, this Court, while allowing the identical petitions, had directed the respondents therein not to interfere with the game of Rummy being played by the members of the Club/Gymkhana in their Club/Gymkhana premises.

#. Considering the judgment of the Hon'ble Supreme Court in the aforesaid case and also the judgment and orders passed by the learned Single Judge in the aforesaid two Special Civil Applications, having regard to the contentions coming from the learned advocates appearing on behalf of the petitioner and the say of the Hon'ble Supreme Court in the case of The State of Andhra Pradesh (supra), it appears that the present petition requires a recognition and the Rule requires to be made absolute. I, therefore, order accordingly and direct that the respondent/s shall not interfere with the game of Rummy being played by the members of the respective petitioners Club/Gymkhana in their Club/Gymkhana premises. These orders shall never preclude the concerned respondent or the officers working under them from taking appropriate action under appropriate provisions of the relevant law and the rules, if it is found that the member or members of the club are playing any other game which could be said to be objectionable or prohibited under the law or the rules.

#. So far as the prayer of the petitioner to direct the respondent authorities to lay down the guidelines for carrying out raid at the premises of the petitioner company and to carry out the raid only in the presence of two gazetted officers and to prepare the panchnama in the presence of two neutral and reputed residents of Baroda City is concerned, such prayer cannot be granted in a petition under Article 226 of the Constitution of India. For the purpose of carrying out raid, the authorities are required to follow the provisions and procedure as laid down under the provisions of the Criminal Procedure Code and/or any other procedure for the time being in force. However, to direct the respondents to carry out the raid only in the presence of two gazetted officers and to prepare the panchnama in the presence of two neutral and reputed citizens of Baroda City is concerned, it will be adding to the provisions which are not there. If ultimately the petitioner is aggrieved by the panchnama and if ultimately it is found by the petitioner that the panchas were not neutral and/or independent, the grievance can be made at the time of trial and even the said panchas can be cross-examined during the trial, but the aforesaid prayer cannot be granted.

#. So far as the prayer directing the respondent authorities to make necessary endorsement in the visit book / register maintained by the petitioner company and to make necessary entry in respect of panchnama is concerned, the same also cannot be granted. In fact, there is no submission made on behalf of the petitioner with regard to the aforesaid prayer as to under which provisions of law, the petitioner is asking for.

#. For the reasons stated above and in view of the above observations, the present petition is partly allowed. Rule is made absolute to the aforesaid extent.

(M.R.Shah,J)

(pathan)